

JK 321

.H8





5470
SOVEREIGNTY,

Allegiance and Secession;

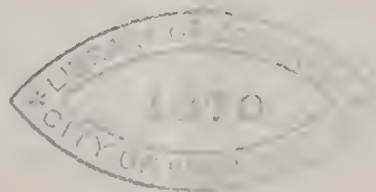
AN ESSAY

ON THE

CONSTITUTION AND GOVERNMENT OF
THE UNITED STATES.

BY HON. WILLIAM HUNTER,

(JUDGE OF THE CRIMINAL COURT OF MEMPHIS.)



MEMPHIS:

Printed by James Dumars, No. 14 Union Street.

1868.

34 5/12
1212
JH321
-H8

Entered according to act of Congress, April 9, 1868, by

WILLIAM HUNTER,

In the office of the Clerk of the District Court of the United States for the District of
West Tennessee.

INTRODUCTION.

In preparing and presenting the following pages to the public, the author has been influenced by a desire to supply what has long appeared to be a great public want in the political literature of this country. An analysis of the fatal heresies of *State sovereignty*, *State allegiance and secession*, upon a legal and constitutional basis, which would present the subject in a form accessible to the mass of the people; for although the fact may not be realized by the Government, or the leading statesmen of the country, it is beyond question that in the Southern States lately in rebellion, these errors pervade to an alarming extent the great mass of the people, and indeed enter into the political doctrines of the Democratic party throughout the Union. With the exception of the celebrated speech of Mr. Webster on the Foote resolution, the speech of Hon. R. J. Walker before a Mississippi Convention, and a very able lecture delivered in Cincinnati, in 1862, by the learned President of Marietta College, upon the subject of allegiance, nothing has appeared of any value, calculated to inform the public mind upon the most important question to every American citizen: *the nature and character of his own Government*, a question which, even in the very able expositions referred to, has scarcely been touched upon. The argument of Mr. Webster, as well as that of Mr. Walker, was to a certain extent confined to the question of Nullification. The lecture of Dr. Lawrence, although able and exhaustive as a moral and political essay, left the legal, constitutional and historical argument almost untouched.

It is a fact too patent to be disputed, that among the Southern people, particularly that class which has been identified with Slavery and the Rebellion, there is not only no attachment for, but a decided antipathy to, a republican form of government. The moral and social influence of the institution which prevailed among them, has been such, operating not only upon their habits and customs, but ultimately upon their character, through a series of many generations, that it has not failed to show itself upon their whole moral and intellectual being. So that, although the Saxon and Celtic element

of the South, of the same stock and ancestry of those types in the North, have, in common with French, Huguenots, Spanish and Italians there, they have all been molded, through the influence of slavery, into a people whose social and political affinities are in direct antagonism with those of the people of the Northern States and the spirit and principles of the American Constitution. In their conversation this dominant class are generally monarchists, and so far as they are concerned, it is matter of little or no consequence what is the nature of the constitution or government. As one of the great results of the revolution which has overturned all their dominion and power as a caste, the destruction of the institution of slavery has left them the recollection of their former high position only, and a spirit of resentment against the people and the Government, as the authors of what they deem their greatest calamity.

It is not to these, or to their class, that the argument in these pages is addressed, but to those of the South who have felt the power and terrible proscription of the slave tyrants, and who were driven to fight the great battle of slavery against the nation. To them and to all true American citizens, who, however misled by the sophistry of a corrupt political school, which has sought under the name of Democracy to betray the people and destroy the nation, yet who are still devoted to the welfare and glory of their native land, and who desire to understand the true nature of that Government which has shown itself to be the best as well as the most powerful on earth; to the patriots and philanthropists of Europe, who would learn the character of our institutions—who have sympathized with us in our late struggle; to them we present these pages, in the hope that they may not prove valueless in directing the minds of all honest inquirers to a rational understanding of the nature of the American Government.

SOVEREIGNTY.

SOVEREIGNTY, as defined by Webster, is :

“Supreme power; possessing supreme dominion; supreme; superior to all others; predominant; pertaining to the chief magistrate of a nation, as sovereign authority.”

“SOVEREIGN; a supreme lord; one who possesses the highest authority, without control; some earthly princes, kings and emperors, are sovereigns in their dominions,”

“A SOVEREIGN; a supreme magistrate, a king.”

“SOVEREIGNTY; supreme power; supremacy; the possession of the highest power; of *uncontrollable power*.

As defined by Bouvier :

“SOVEREIGNTY is the union and exercise of all *human power*, to do everything in a state, *without accountability*; to make laws, execute and apply them; to impose and collect taxes and levy contributions; to make war or peace; to form treaties of alliance and commerce with foreign nations, and the like.”

Story, in his work on the Constitution, section 207, says :

“In the first place, antecedent to the Declaration of Independence, none of the colonies were or pretended to be sovereign, in the sense in which the term sovereign is *applied to States*. The term ‘sovereign,’ or ‘sovereignty,’ is used in different senses, which often leads to a confusion of ideas, and sometimes to very mischievous and unfounded conclusions. By sovereignty, in its largest sense, is meant *supreme, absolute, uncontrollable power*—the *absolute right to govern*.”

What are the *essential* attributes of sovereignty? Certainly such as entitles the government possessing them to recognition as an independent power, and as one among the family of nations.

Among the essential attributes of sovereignty of a State or nation are—

1st. The right to *perpetuate* its own existence by force of arms, and to that end,

To declare war, suppress insurrections and repel invasions, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies and navies;

To borrow money, and issue bonds and bills of credit therefor;
 To lay and collect taxes, duties, imposts and excises;
 To regulate commerce, internal and international;
 To coin money and regulate the value thereof, and fix the standard of weights and measures;

To provide for the punishment of treason, and all crimes and offenses against its own authority and against the laws of nations;

To exercise supreme authority over all territory, including all property and persons within the national boundaries, excepting, only, consuls, ministers, and ambassadors of foreign States;

To enter into treaties of alliance, commerce and amity with foreign States and nations;

To control and regulate the rights, duties and privileges of its own citizens, and to protect them as such when denizens of foreign countries;

To acquire and extend its territory by cession, treaty and conquest.

These attributes of sovereignty are so essential that a State without them is necessarily without sovereignty, for it consists alone in their possession and enjoyment.

The original Articles of Confederation, adopted during the progress of the Revolution, and before the acknowledgment of independence by Great Britain, contains the following "Preamble:"

ARTICLES OF CONFEDERATION.

Whereas, The delegates of the United States of America, in Congress assembled, did on the fifteenth day of November, in the year of our Lord one thousand seven hundred and seventy-seven, and in the second year of the independence of America, agree to certain articles of confederation and *perpetual* union between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, in the words following:

Articles of Confederation and *perpetual* union between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

The style of this Confederacy shall be "The United States of America."

Each State retains its *sovereignty*, freedom and independence, and every power, jurisdiction and right which is not by this Confederation expressly delegated to the United States, in Congress assembled.

No State, without the consent of the United States in Congress

assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance or treaty, with any king, prince or State; nor shall any person holding any office of profit or trust under the United States, or any of them, accept any present, emolument, office or title, of any kind whatever, from any king, prince or foreign State; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more States *shall enter into any treaty, confederation or alliance whatever* between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is entered into, and how long it shall continue.

No State shall lay any imposts or duties, which may interfere with any stipulation in treaties entered into by the United States in Congress assembled, with any king, prince or state, in pursuance of any treaties already proposed by Congress to the courts of France or Spain.

No vessels of war shall be kept in time of peace by any State, except such number only as shall be deemed necessary by the *United States* in Congress assembled, for the defense of such State or its trade; nor shall any body of forces be kept up by any State, in time of peace, except such only as in the judgment of the *United States* in Congress assembled shall be deemed requisite to garrison the forts necessary for the defense of such State. * * *

No State shall engage in any war without the consent of the *United States* in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians for that purpose to invade such State, and the danger is so imminent as not to admit of delay till the *United States* in Congress assembled can be consulted; nor shall any State grant commissions to any ships or vessels of war, nor grant letters of marque and reprisal, except it be after a declaration of war by the *United States* in Congress assembled, and then only against the kingdom or State, and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the *United States* in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the *United States* in Congress assembled shall determine otherwise.

* * * * *

The *United States* in Congress assembled shall have the sole and exclusive right and power of determining on *peace* and *war*, (except in the cases mentioned in the sixth article,) of sending and receiving ambassadors, of entering into treaties and alliances, (provided that no treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners as their own people are subject to, or of prohibiting the exportation or importation of any species of goods

or commodities whatsoever,) of establishing tribunals for deciding in all cases what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces shall be divided or appropriated; of granting letters of marque and reprisal in times of peace; appointing courts for the trial of piracies and felonies committed on the high seas, and establishing courts for receiving and determining finally appeals in all cases of captures.

* * * * *

The *United States* in Congress assembled shall also be the *last resort on appeal* in all disputes and differences now subsisting, or that hereafter may arise between two or more States, concerning boundary jurisdiction *or in any case whatever*.

All bills of credit emitted, moneys borrowed and debts contracted, by or under the authority of Congress, before the assembling of the United States, in pursuance of the present Confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States, and the public faith, are hereby solemnly pledged.

Every State shall abide by the determination of the *United States in Congress assembled*, on *all* questions which by this Confederation are submitted to them; and the Articles of this Confederation shall be inviolably observed by every State, and the *Union shall be perpetual*; nor shall any alteration at any time hereafter be made, in any of them, unless such alteration be agreed to by a *Congress of the United States*, and be afterwards confirmed by the Legislature of every State.

And, whereas, it hath pleased the great Governor of the world to incline the hearts of the Legislatures we respectfully represent in Congress, to approve of and to authorize us to ratify the said Articles of Confederation and *perpetual union*, know ye, that we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, in the name and on behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said Articles of Confederation and *perpetual union*, and all and singular the matters and things therein contained; and we do further solemnly plight and engage the faith of our respective constituents, that they *shall abide* by the determination of the "*United States in Congress assembled*," on all questions which by the said Confederation are submitted to them, and that the Articles thereof shall be inviolably observed by the States we respectively represent, and that the *Union shall be perpetual*.

/ In these Articles the States *retain* their sovereignty.

A legitimate question presents itself. When, where and how did the States obtain that sovereignty which they profess to have retained? Sovereignty being that attribute which, when applied to States, belongs alone to an independent power, recognized as such by the great family of nations. To say that an embryo government, struggling to establish itself as a member of that family, and before

the question of its independence has been determined by the only tribunal capable of determining it—the great family of nations—is already an independent sovereign State, is a proposition unknown to international law, and would compel us to declare that Poland, Ireland, Italy and Hungary are now *sovereign* and *independent* States.

To this it may be replied, that the colonies subsequently obtaining their independence were confirmed in their demand therefor, and that the sovereignty subsequently acknowledged related back to date of their demand or declaration of independence.

Let us see. Can a people or province seeking independence, who, in order to obtain it, *transfer their allegiance* to a third power, by whose arms they are liberated, claim or possess such independence without the acknowledgment of that power to which they owe their liberation and to which, for the purpose of securing that liberty, they transferred their allegiance? They may have improved their condition by substituting one government for another, but have not obtained either sovereignty or independence until both are acknowledged by the power that alone has the right to bestow it.

The people of the colonies, for the purpose of obtaining independence, not of the colonies separately, but of the *whole people*, in order to establish a *nation*, combined, all for the benefit of each, the armies of the “*United States in Congress assembled*,” and relieved the people of Carolina from British dominion. To enable the United States to do this the people of Carolina, while they claimed to *retain* a sovereignty they never had, surrendered to the United States, in the Articles of Confederation, every important and substantial element of sovereignty, so far as they could surrender the same, and that surrender was *perpetual*. Without this the revolution must have failed; to insure this there must have been a government. That government must of necessity possess the powers which experience has proven necessary to sustain it.

The people, then, conferred these powers, and, to prevent internal conflict, expressly prohibited them to the States in the Articles of Confederation. Could harmony and unity of action have been preserved if, without the consent of the United States, each State could have sent and received embassies, entered into alliance and treaty with any “king, prince or State,” or with each other; laid imposts and duties, kept vessels of war in time of peace, engaged in war, granted letters of marque and reprisal, coined money, fixed the standard of weights and measures, appointed officers for the land and

naval forces—made rules for their government and directed their operations; determined questions between themselves, without an *appeal* to the “*United States in Congress assembled*,” as a last resort? Yet by the Articles of Confederation these are conferred by the people upon the *United States in Congress*, and expressly prohibited to the States, and that *forever*. The people therein transferred their allegiance from Great Britain, not to the States, but to the power known as “the *United States in Congress assembled*.”

In a free government all sovereignty is with the people, and unless conferred by them the government can neither obtain nor possess it.

There is not to be found in any Constitution adopted by the people of any State prior to either the Articles of Confederation or the Federal Constitution, any provision in which the people conferred upon their State government any of the essential attributes of sovereignty; therefore, if the States ever possessed any sovereignty they obtained it surreptitiously, for it was never given to them, or any of them.

To say that Great Britain, in acknowledging our independence, conferred sovereignty and separate independence upon each of the States, without the consent or authority, either of the whole people or of the people of a single State, thus dividing a nation into fragments whose *united efforts* had compelled that acknowledgment, destroying our nationality, forcing a repudiation of our national obligations, as a consequence taking from the General Government the power to borrow money upon the national faith by a destruction of the national credit, and instead of conferring upon us independence as the people of the United States, bequeathed to us, in the erection of thirteen sovereign States, an inheritance of continuous discord, interminable wars, probable anarchy, and, as a consequence, ultimate despotism. Thus destroying the whole end and aim of the Revolutionary fathers, when they proclaimed to the world the causes which led them, as *one people*, to dissolve the political bands which connected them with another, and to assume among the “*powers of the earth*” “the separate and equal station to which the laws of nature and of nature’s God entitled them.”

If the people at that day really intended that each State should retain its sovereignty and independence, why did they bind themselves in a *perpetual union*, which bond of perpetuity was of itself necessarily a complete surrender of all sovereignty, for the whole

argument may be included in a single proposition: If the States, being sovereign in the Articles or Federal Constitution, retained the right of secession, they retained the right to resume that sovereignty; but if instead of retaining that right, they voluntarily surrendered to the United States every attribute of sovereignty, and *that forever*, and bound themselves in a union that was, in the language of the instrument itself, to be *perpetual*, they surrendered not only every attribute of sovereignty, but also abandoned forever the power to resume it.

If under the Articles of Confederation the States were to retain their sovereignty, freedom and independence, and that uncontrollable power which belongs to sovereignty, why did they forever confer upon the United States in Congress assembled the exclusive right to send and receive ambassadors, to enter into any conference, alliance or treaty with any king, prince or State? Why were any two or more States expressly prohibited from entering into any treaty, alliance or confederation with each other, without the consent of the *United States* in Congress assembled—that consent specifying, accurately, the purposes for which the same is entered into, and how long it should continue? Why were the States prohibited from laying any imposts or duties which might interfere with treaties made, or to be made, by the United States in Congress assembled? Why were the States prohibited from keeping vessels of war in time of peace, except such number only as should be deemed necessary by the *United States* in Congress assembled, for the defense of such State or its trade? Why were the States prohibited from keeping any body of forces or troops, except such number as should be deemed requisite for garrisoning the forts necessary for the defense of such State? If each State retained its sovereignty, why was each State, by the Articles of Confederation, prohibited from engaging in war, without the consent of the *United States*, unless each State be actually invaded by enemies, or in such immediate danger as not to admit of delay till the United States could be consulted? Why were the States forbidden to grant commissions to ships of war, or letters of marque and reprisal, until after a declaration of war by the *United States*, and then only under such regulations as should be established by the *United States*?

If the States retained their sovereignty, why was the United States given the sole and exclusive right and power of determining on *peace* and *war*, excepting the emergencies already named—of sending and receiving ambassadors, of entering into treaties and

alliances, of establishing tribunals for determining captures on land or water, of granting letters of marque and reprisal. appointing courts for the trial of piracies, and determining appeals in all cases of captures? If the States retained their sovereignty, why by the Articles of Confederation were the United States in Congress assembled made the last resort on appeal in all disputes between two or more States, concerning boundary, jurisdiction, or in any case whatever? If the States were sovereign, and could withdraw from the Union at pleasure, why in the Articles of Confederation were the debts contracted and moneys borrowed by Congress made a charge against the United States, and the public faith pledged for their payment? If, under the Articles of Confederation, each State retained its sovereignty, why was each State bound to abide by the determination of the United States in Congress assembled on all questions therein submitted to them, and why was the *Union made perpetual*? If the States retained their sovereignty, why was any alteration of the Articles of Confederation forbidden, unless agreed to by Congress, and afterwards confirmed by *every State*?

Can the adherents of the doctrine of State sovereignty explain of what kind is that sovereignty which has stripped itself forever of the power to *send or receive ambassadors*, or to enter into any "conference, agreement, alliance or treaty *with any king, prince or State*," or of *entering into any "treaty, confederation or alliance"* with either of the other States, without the consent of the *United States*? What kind of sovereignty is that which surrendered *forever* the right to lay imposts or duties which might interfere with treaties made by the United States or proposed by Congress, to keep troops or vessels of war except such as may be deemed necessary by *Congress* for the defense of such State? What kind of sovereignty does a State possess which surrenders *forever* its right to "engage in war" unless with the consent of the United States, or in actual or apprehended invasion, and then only until the United States could be consulted? Of what character is that sovereignty which renounced forever its power to grant commissions to any ships or vessels of war, and letters of marque and reprisal, only after a declaration of war by the United States, and subject to its restriction?

I have briefly shown that, from the commencement of the Revolution down to the adoption of the Articles of Confederation, and from that period until the adoption of the Federal Constitution, at no time did any of the colonies or States, as either, for one moment ever

obtain or possess any of that sovereignty which they were so ambitious to assume and so careful to "*retain*."

We now come to that period when, after the adoption of the Articles of Confederation and the acknowledgment of the independence of the United States by the mother country, it became necessary to inaugurate civil government for the people of the whole country, in a condition of *peace*, and to establish upon permanent bases, by treaty and otherwise, such relations with foreign powers as were by the principles of international law our recognized right among the great powers of the earth.

Before the adoption of the Articles of Confederation, the people of the States had as yet in no instance adopted State constitutions. The local governments, so far as they existed, were but a continuation, in each case, of the limited powers exercised as colonies of Great Britain, which it would be absurd at this day to claim were sovereign, when their own history demonstrates that even what powers they did possess were strictly confined to internal police, under complete subjection to the British Parliament and the governors of each colony, who represented the British Government. It is true, however, that there was at this period a party who desired to establish, not a national government but a confederation of independent States, who, at the period of the adoption of the Articles of Confederation, strongly opposed the surrender of the powers of sovereignty therein defined, but who were overborne by the necessities of the time and the urgent demand for a government of sufficient strength to carry the people successfully through the struggle for independence. Soon after the termination of the War of the Revolution, it became apparent that the powers vested in the General Government by the Articles of Confederation were inadequate, and that the unity which existed between the States during the war had resulted rather from the pressure of circumstances than from any authority of the General Government.

So universal was the conviction that the public welfare required a government of more extensive powers, that in May, 1787, a convention, composed of delegates from all the States in the Union, except Rhode Island, assembled at Philadelphia to take the subject into consideration. It continued its deliberations with closed doors until the 17th of the following September, when the Federal Constitution was promulgated. The convention resolved, "That the Constitution be laid before the United States in Congress assembled, and that it

is the opinion of this convention that it should afterwards be submitted to a convention of delegates, chosen in each State by the people thereof, for their assent and ratification."

In conformity to the recommendation of the Convention, Congress, on the 28th of the same month, passed a resolution directing that the Constitution be submitted to conventions to be assembled in the several States.

In the conventions subsequently assembled, the question of its adoption was discussed with great ability, and it is scarcely hazardous to assert that the two contending political schools, which have since so often and so seriously agitated the country, for the first time assumed organization and form in the contest of that period—one party adhering with great tenacity to the principle of a confederated government with limited powers, with the sovereignty of the States, and for preserving the Articles of Confederation as the framework upon which any changes should be made which experience had shown to be essential; the other in favor of a radical change in the principle of government, renouncing the independent sovereignty of the States; urging the establishment of a Federal Government, to be based upon such grants of power as might be obtained *directly from the people*, making the States completely subservient thereto; eschewing State sovereignty, and depositing all powers necessary to constitute a sovereign and supreme head in the government of the nation. The first party preferred the confederate form, as imperfectly expressed in Article II, in the declaration that "each State retains its sovereignty, freedom and independence, and every power, jurisdiction and right which is not by this confederation expressly delegated to the United States in Congress assembled." The second party preferred the Federal form as expressed in the Federal Constitution.

Judge Story, in his celebrated work on the Constitution, in speaking of the "decline and fall of the Confederation," vol. 1. sec. 264. says:

"They (the colonies) were suddenly brought together, not so much by any deliberate choice of a permanent union as by necessity of mutual co-operation and support, in resistance to the measures of Great Britain. They found themselves, after having assembled a general Congress for mutual advice and encouragement, compelled by the course of events to clothe that body with *sovereign powers* in the most irregular and summary manner, and to permit them to assert the general prerogatives of *peace and war*, without any previous compact, and sanctioned only by silent acquiescence of the

people. Under such circumstances each State felt that it was the true path of safety to retain all sovereign powers within its own control, the surrender of which was not clearly seen under existing circumstances to be demanded by an imperious public necessity.

“Notwithstanding the declaration of the Articles, that the Union was to be *perpetual*, an examination of the powers confided to the General Government would easily satisfy us that they looked principally to the existing revolutionary state of things. The principal powers respected the operations of a state of war and would be dormant in a state of peace. In short, Congress in peace was possessed of but a delusive and shadowy sovereignty, with little more than the empty pageantry of office. They were indeed clothed with the authority of sending and receiving ambassadors; of entering into treaties and alliances; of appointing courts for the trial of piracies and felonies on the high seas; of regulating the public coin; of fixing the standard of weights and measures; of regulating trade with the Indians; of establishing postoffices; of borrowing money, and emitting bills on the credit of the United States; of ascertaining and appropriating the sums necessary for defraying the public expenses, and of disposing of the Western territory; and most of these powers required for their exercise the assent of *nine States*. But they possessed not the power to raise any revenue, to levy any taxes, to enforce any law, to secure any right, to regulate any trade, or even the poor prerogative of commanding means to pay its own ministers in a foreign court. They could contract debts, but were without the means to discharge them; they could pledge the public faith, but were incapable of redeeming it; they could enter into treaties, but every State in the Union might disobey them with impunity; they could contract alliances, but could not command men or money to give them vigor; they could institute courts for felonies or piracies on the high seas, but they had no means to pay either the judges or the jurors. In short, all powers which did not execute themselves were at the mercy of the States, and might be trampled upon with impunity.”

One of the leading writers addressed the following strong language to the public :

“By this political compact the United States in Congress assembled have exclusive power for the following purposes, without being able to execute one of them: They may make and conclude treaties, but can only recommend the observance of them; they may appoint ambassadors, but cannot defray even the expenses of their tables; they may borrow money in their own name on the faith of the Union, but cannot pay a dollar; they may coin money, but they cannot purchase an ounce of bullion; they may make war and determine what troops are necessary, but cannot raise a single soldier. In short, they can declare everything but do nothing.”

Strong as this language may seem, it has no coloring beyond what the naked truth would justify.

Hamilton speaks, in 1785, on the same subject: "In a word," says he, "the Confederation appears to me to be little more than a shadow without the substance; and Congress a nugatory body, their ordinances being little attended to."

The leading defects of the Confederation may be enumerated under the following heads:

In the first place, there was an utter want of all *coercive authority* to carry into effect its own constitutional measures. *This of itself was sufficient to destroy its whole efficiency as a superintending government, if that may be called a government which possessed no one solid attribute of power.*

It has been justly observed, that "a government authorized to declare war, but relying on independent States for the means of prosecuting it; capable of contracting debts, and of pledging the public faith for their payment, but depending on thirteen distinct sovereignties for the preservation of that faith—could only be rescued from ignominy and contempt by finding these sovereignties administered by men exempt from the passions incident to human nature."

The fact corresponded with the theory. Even during the Revolution, while all hearts and hands were engaged in the common cause, many of the measures of Congress were defeated by the inactivity of the States, and in some instances the exercise of its powers were resisted. But after the peace of 1783 such opposition became common, and gradually extended its sphere of activity until, in the expressive language already quoted, "the Confederation became a shadow without the substance."

The *Federalist* speaks with unusual energy on this subject:

"The great and radical view in the construction of the Confederation is in the principle of *legislation for States or governments in their corporate or collective capacities, and as contradistinguished from the individuals of which they consist.* Though this principle does not run through all the powers delegated (in the Articles of Confederation) to the Union, yet it pervades and governs those on which the efficacy of the rest depend. Except as to the rule of apportionment, the United States have an indefinite discretion to make requisitions for men and money, but they have no authority to raise either by regulations extending to *the individuals of America.* The consequence of this is, that though in theory their resolutions concerning these objects are laws, constitutionally binding on the members of the Union, yet in practice they are mere recommendations, which the States can observe or disregard at their option."

Again :

“The concurrence of thirteen distinct sovereignties is requisite, under the Confederation, to complete the execution of every important measure that proceeds from the Union. It has happened, as it was to have been foreseen, the measures of the Union have not been executed. The delinquencies of the States have step by step matured themselves to an extreme, which has at length arrested all the wheels of the National Government, and brought them to an awful stand. Congress at this time scarcely possesses the means of keeping up the forms of administration till the States can have time to agree upon a more substantial substitute for the present shadow of a Federal Government.

“Congress had no power to exact obedience, or punish disobedience to its ordinances. They could neither impose fines nor direct imprisonment, nor divest privileges, nor declare forfeitures, nor suspend refractory officers. There was in the Confederation no express authority to *exercise force*; and though it might ordinarily be implied as an incident, the right to make such implication was prohibited, for each State was to ‘retain every power, right and jurisdiction not expressly delegated to Congress.’ The consequence naturally was, that the resolutions of Congress were disregarded, not only by States but by individuals. * * * * *

“But a still more striking defect was the total want of power to lay and levy taxes, or to raise revenue to defray the ordinary expenses of government. The whole power confided to Congress under this head, was ‘the power to ascertain the sums necessary to be raised for the service of the United States,’ and to apportion the quota or proportion on each State; but the power was *expressly reserved to the States to lay and levy the taxes*, and of course the time, as well as the mode of payment, was extremely uncertain. The evils resulting from this source, even during the Revolutionary war, were of incalculable extent, and but for the good fortune of Congress in obtaining foreign loans, it is far from being certain that they would not have been fatal.

“But this consideration sinks into utter insignificance, in comparison with others. Requisitions were to be made upon thirteen independent States, and it depended upon the good will of the Legislature of each State whether it would comply at all. * * * Indeed, from the moment that the peace of 1783 secured the country from the distressing calamities of war, a general relaxation took place, and many of the States found apologies for their gross neglect in evils common to all. Many solemn appeals were from time to time made by Congress to the States, but they were attended with no salutary effect. * * * The Treasury was empty; the credit of the Confederacy was sunk to a low ebb; the public burdens were increasing; the public faith was prostrate. * * *

“On the 12th of February, 1783, Congress resolved that the establishment of permanent and adequate funds, or taxes or duties

throughout the United States, were indispensable to do justice to the public creditors. A subsequent resolution was passed, asking power to levy certain specific duties, and a duty of five per cent. *ad valorem* on all other imported articles. This measure was recommended by Washington, in a circular letter addressed to the Governors of the several States, in which he stated that in his opinion there were four things essential to the well being and existence of the United States as an independent power, viz: First, an indissoluble union of the States under one federal head. Second, a sacred regard to public justice. Third, the adoption of a proper peace establishment. Fourth, the prevalence of a pacific and friendly disposition of the people of the United States towards each other. Subsequently, in urging the adoption of regulations necessary for the protection of American citizens, he used the following language: 'America must appear in a very contemptible point of view to those with whom she was endeavoring to form commercial treaties, without possessing the means of carrying them into effect. They must see and feel that the Union of the States are individual or sovereign, as best suits their purposes; in a word, that we are a nation to-day and thirteen to-morrow. *Who will treat with us on such terms?*'

"The difficulty of enforcing even the obligations of the treaty of peace of 1783 was a most serious national evil. Great Britain made loud complaints of infractions thereof on the part of the several States, and demanded redress. She refused, on account of these alleged infractions, to surrender up the western forts, according to the stipulations of that treaty, and the whole Confederacy was threatened with the calamities of Indian depredations on the whole of our western borders, and was in danger of having its public peace subverted through its mere inability to enforce the treaty stipulations. The celebrated address of Congress, in 1787, to the several States on this subject, is replete with admirable reasoning, and contains melancholy proofs of the utter inefficiency of the Confederation, and of the disregard by the States of the provisions of that treaty."

There were numerous other defects seriously urged against the Confederation, among which were the following:

1. The principle of regulating the contributions of the several States into the national treasury by quotas.
2. The want of a guaranty to protect each State against insurrections and usurpations.
3. The want of a direct power to raise armies.
4. The right of equal representation among the States, according to wealth and population.
5. The organization of the whole powers of the Government in a single assembly, without an executive or judicial department, as distinct from the legislative.
6. The want of an executive power in the General Government, to

issue paper money, and thus prevent the inundation of the country with a base currency.

7. The want of a judicial power, co-extensive with the powers of the General Government.

The *Federalist*, in speaking of this last defect, says :

“Laws are a dead letter without courts to expound and define their true meaning and operation. The treaties of the United States, to have any force at all, must be considered as a part of the law of the land. Their true import must, like other laws, be ascertained by judicial determinations. To produce uniformity in these decisions, they must, as a last resort, be submitted to one supreme tribunal. To avoid confusion, which would unavoidably result from the contradictory decisions of a number of independent judicatories, all nations have found it necessary to establish one tribunal paramount to the rest, possessing a general superintendence, and authorized to settle and declare, in the last resort, a uniform rule of justice. * *

“The treaties of the United States, under the present Confederation, are liable to the infractions of thirteen different Legislatures, and as many different courts of final jurisdiction, acting under the authority of those Legislatures. The faith, the reputation and the peace of the whole Union are thus continually at the mercy of the prejudices, the passions and the interests of every member of which these States are composed. Is it possible, under such circumstances, that foreign nations can either respect or confide in such a government? * * The last defect, which seems worthy of consideration, is that the Confederation never had a ratification of the people.

“In relation to the subject of these defects in the Confederation, Mr. Jefferson uses, on page 444 of volume 4 of his correspondence, the following language :

“ ‘The alliance between the States, under the old Articles of Confederation, for the purpose of joint defense against the aggressions of Great Britain, was found insufficient, as treaties of alliance generally are, to enforce compliance with their mutual stipulations ; and these once fulfilled, that bond was to expire of itself, and each State to become sovereign and independent in all things.’ ”

“This seems to have been the extraordinary opinion of Mr. Jefferson, *that the Confederation was to cease with war*, notwithstanding the *express provision* contained in the Articles themselves—*that the Union thereby created ‘should be perpetual.’*

“Whatever may be thought as to some of these enumerated defects, there cannot be a doubt that others of them went to the very marrow and essence of government. There had been different parties in the several States, hostile or friendly to the existence of a Federal Government. The former would naturally cling to the State Governments with an unabated zeal, and deem the least possible delegation of power to the Union sufficient, with which it could creep on in a semi-animated state. The latter would as naturally desire that the powers

of the General Government should have a real, and not merely a suspended vitality. But each party must have felt that the Confederation had at last totally failed as an effectual instrument of government; that its glory was departed, and its days of labor done; that it stood the shadow of a mighty name; that it was seen only as a decayed monument of the past, incapable of any enduring record; that the steps of its decline were numbered and finished, and that it was now passing that very door of the common sepulcher of the dead, whose inscription is, '*Nulla vestigo retrorsum.*'"

In this state of things, Commissioners were appointed by the Legislatures of Virginia and Maryland, early in 1785, to form a compact relative to the navigation of the rivers Potomac and Pocomoke and the Chesapeake Bay; but, for want of sufficient powers to accomplish the objects of their appointment, nothing definite was accomplished. Other efforts, having for their object the regulation of the trade of the United States, were soon after made, but from similar causes failed in obtaining any result, until, finally, on the 21st of February, 1787, a resolution was passed by Congress, recommending a Convention to meet at Philadelphia on the second Monday of May following, "for the purpose of revising the Articles of Confederation, and reporting to Congress, and the several Legislatures, such alterations and provisions therein as shall, when agreed to in Congress, render the Constitution adequate to the exigencies of government and the preservation of the Union."

The Convention assembled at the time and place appointed. Twelve States were represented. Rhode Island alone declined to appoint. After protracted deliberation, the plan of the present Constitution was finally, on the 17th of September, 1787, adopted, and by resolution directed to be laid before "the United States in Congress assembled," and the opinion declared that it should afterwards be submitted to a Convention of Delegates chosen in each State, by the people thereof, under a recommendation of its Legislature, for their assent and ratification. The Convention at the same time addressed a letter to Congress, in which they said:

"It is obviously impracticable in the Federal Government of these States to secure all rights of independent sovereignty to *each*, and yet provide for the interest and safety of *all*. Individuals entering society must give up a share of liberty to preserve the rest. The magnitude of the sacrifice must depend as well on situation and circumstances as on the object to be attained. It is at all times difficult to draw with precision the line between those rights which must be surrendered and those which may be reserved; and on the present

occasion the difficulty was increased by a difference among the several States as to their situation, extent, habits and particular interests. In all our deliberations on this subject we kept steadily in view that which appears to us the greatest interest of every true American : *the consolidation of our Union*, in which is involved our prosperity, felicity, safety—perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each State in Convention to be less rigid in points of inferior magnitude than might have been otherwise expected ; and thus the Constitution which we now present is the result of a spirit of amity, and of that mutual deference and *concession* which the *peculiarity* of our political situation *rendered indispensable*.”

THE ORIGIN OF PARTIES IN THE CONSTITUTIONAL CONVENTION.

The history of the proceedings of the Convention which adopted the Federal Constitution, shows clearly the existence of two parties, representing antagonistic political theories, supported on both sides with great ability. One was in favor of the principle of independent sovereignty in the States, as attempted to be expressed in the Articles of Confederation, recognizing the doctrine of citizenship, and consequent allegiance with reference only to State Governments, and yielding only such power to such General Government as might be established, as would be necessary to establish a Confederacy of independent States. The other was in favor of a central, *consolidated government*, which should embody in itself all the attributes of a sovereign, independent nation, in opposition to the expressed doctrine of the Articles of Confederation, recognizing the doctrine of citizenship and consequent allegiance with reference to the central or federal power ; in favor of conferring thereon, and prohibiting to the States, in whatever constitution might be adopted, in direct and specific terms, all such essential attributes of sovereignty as might be found necessary to establish a nation. And the positions of the delegates composing that Convention was not in the least affected by the latitude or section from whence they came, either as to North or South, nor as to any bearing that the settlement of these great questions might have had upon the institution of slavery. In all the prolonged debates of that great body, neither of these matters were ever presented in discussion, or even alluded to, by any member ; but the question was on the comparative power in the representation to be obtained in the proposed National Legislature ; the larger States insisting upon the rule of representation according to population : the smaller ones in favor of preserving the equality of representation by States, without any regard whatever to wealth, territory or popu-

lation; and this complexion of the matter presented itself throughout, with occasional exceptions, it is true, as to the position of certain States and particular delegates.

The great issue which was before the Convention, which employed its time and monopolized its deliberations, and which was finally determined in the adoption of the Federal Constitution, was whether the great principle of impartial representation of the individuals who composed the whole people should be overthrown by the rule of representation by States, based upon the dogma of their separate and independent sovereignty.

On the 29th of May, 1787, a plan of government was submitted by Mr. Randolph, of Virginia, which was subsequently known in the debates as the "Virginia Plan," providing for separate legislative, executive and judicial departments; the legislative to be composed of two bodies; the first (or House) to be elected directly by the people; the second (or Senate) to be elected by the first. This proposition was subsequently changed by the committee, making the second body (or Senate) elective by the Legislatures of the several States.

In proof and explanation of these facts, I quote from the celebrated work of the Hon. Luther Martin, of Maryland, entitled the "Secret Debates of the Federal Convention," Mr. Martin being at the time a member of that body, and a most strenuous and persistent opponent of the proposed change in the Government. The work of Mr. Martin, which was by him subsequently presented to the Legislature of Maryland, and addressed to the Speaker of that body, as a report of the proceedings of the Convention, contains, on page 12, the following language :

" You have heard, sir, the resolutions which were brought forward by the honorable member from Virginia. Let me call the attention of this House to the conduct of Virginia. When our *Confederation* was entered into, that State proposed and obstinately contended, contrary to the sense of, and unsupported by the other States, for an *inequality of suffrage, founded on numbers*, or some such scale which would give her and certain other States influence in the Union over the rest. Pursuant to that spirit which characterized her, and uniform in her conduct, the very second resolve is calculated expressly for that purpose, to give her a representation proportional to her numbers, as if the want of that was the principal defect in our original system, and this alteration the great means of remedying the evils we had experienced under our present government.

" The object of Virginia and other large States, to increase their power and influence over the others, did not escape observation.

The subject, however, was discussed with great coolness in the committee of the whole House, (for the Convention had resolved itself into a committee of the whole to deliberate upon the propositions submitted by the honorable member from Virginia.) * *

“ While these resolves were the subject of discussion in the committee of the whole House, a number of the members who disapproved of them *were preparing another system; such as they thought more conducive to the happiness and welfare of the STATES.*”

The most important of these resolutions, relating to the present question, are the following :

Resolved, That it is the opinion of this Committee that a *National* Government ought to be established, consisting of a *Supreme* Legislature, Judiciary and Executive.

Resolved, That the Legislature ought to consist of two houses.

Resolved, That the members of the first branch of the *National* Legislature ought to be elected by the *people* of the several States, for the term of three years, to receive fixed stipends, by which they may be compensated for the devotion of their time to public service, to be paid out of the *National Treasury*, &c. * * *

Resolved, That the members of the second branch of the Legislature ought to be chosen by the individual legislatures, * * * to hold their office for seven years. * * *

Resolved, That the *National* Legislature ought to be empowered to enjoy the legislative rights vested in Congress by the Confederation, and moreover to legislate in all cases to which the separate States are incompetent, or in which the harmony of the United States may be interrupted, by the exercise of individual legislatures; *to negative all laws passed by the several States*, contravening in the opinion of the Legislature of the United States, the articles of Union, or any treaties subsisting under the authority of the Union.

Resolved, That the right of suffrage in the first branch *ought not* to be according to the rule established in the Articles of Confederation, but according to some *equitable* rate of representation, namely : in proportion to the whole number of white and other free citizens, and inhabitants of every age, sex and condition. * * *

Resolved, That the right of suffrage in the second branch of the *National* Legislature ought to be according to the rule established *in the first*.

Resolved, That the jurisdiction of the *National* judiciary shall extend to cases which respect the collection of the *national* revenue; cases arising under the laws of the United States, impeachments of any national officer, *and questions which involve the national peace and harmony.*

“ These propositions,” continues Mr. Martin, “ were acceded to by a majority of the members of the committee—a system by which the large *States were not only to have an inequality of suffrage in the first branch, but also the same inequality in the second branch, or Senate.*

However, it was not designed that the second branch should consist of the same *number* as the first. It was proposed that the Senate should consist of *twenty-eight members*, formed on the following scale: Virginia to send five, Pennsylvania and Massachusetts each four, South Carolina, North Carolina, Maryland, New York and Connecticut two each, and the States of New Hampshire, Rhode Island, Jersey, Delaware and Georgia each one.

"Upon this plan the three larger States, Virginia, Pennsylvania and Massachusetts, would have thirteen Senators out of twenty-eight—almost one-half of the whole number. Fifteen Senators were to be a quorum to do business; these three States would therefore have thirteen out of that quorum, having this inequality in *each* branch of the Legislature. * * * * *

"This system of slavery," continues the writer, "which bound hand and foot the ten States in the Union, and placed them at the mercy of the other three, and under the most abject and servile subjection to them, *was approved by a majority of the members of the Convention*, and reported by the committee.

"On this occasion, the house will recollect, the Convention was resolved into a committee of the whole—of this committee Mr. Graham was chairman. The Honorable Mr. Washington was then on the floor, in the same situation with the other members of the Convention at large, to oppose any system he thought injurious, or to propose any alterations or amendments he thought beneficial. To these propositions, so reported by the Committee, *no oppositiin* was given by that *illustrious personage*, or by the President of the State of Pennsylvania. They both appeared cordially to approve them, and to give them their hearty concurrence. * * *

"At length, sir, after every argument had been exhausted by the advocates of *equality of representation*, the question was called, when a majority decided in favor of the *inequality*; Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina and Georgia voting for it; Connecticut, New York, New Jersey and Delaware against it; Maryland divided."

It will be remembered that this vote was taken upon the proposition embraced in the seventh resolution, that the right of suffrage in the first branch of the National Legislature ought not to be according to the rule established in the Articles of Confederation, but according to some equitable rate of representation, namely, in proportion to the whole number of white, and *other* free citizens and inhabitants, of every age, sex and condition, &c. And, to the surprise of the distinguished author, not only the States of Massachusetts and Pennsylvania, but also *Virginia, North Carolina and Georgia*, and even the illustrious President of the Convention, George Washington, voted for a rule of representation, in the first branch, upon the *basis of population*, in *opposition* to that of *representation by States*; and

this, too, "after every argument had been exhausted" by the advocates of the latter system.

The writer further shows, that on "the next day the question came on with respect to the *inequality* of representation in the *second* branch; but little debate took place; the subject had been exhausted in the former question. On the votes being taken, Massachusetts, Pennsylvania, Virginia, North Carolina and South Carolina voted for the *inequality*; Georgia divided."

Thus we see from the record of history that the great States of Massachusetts and South Carolina, had in older times, as in latter days, walked arm and arm and stood side by side for the great principle of popular government. But while Massachusetts has steadfastly adhered to the principles she then sustained—has freely given forth the treasure and sacrificed the best blood of thousands of her children to defend and perpetuate that sacred temple whose foundations were laid and cemented in the blood of the whole people, South Carolina has proved basely recreant to the sacred pledge and principles of her fathers, and in carnage and desolation vainly striven to strike down that sacred edifice which had been raised through so much sacrifice by her patriotic sires.

Again, Mr. Martin, in reciting the argument presented to the Convention by the advocates of State sovereignty, says :

"It was urged that the government we were forming was not in reality a federal, but a national government; not founded upon the principle of the preservation, but the abolition or consolidation of all State governments. * * That we had not been sent to form a government over the *inhabitants* of *America*; considered us individuals—that as individuals they were all subject to their respective State governments. * * That the system of government we were entrusted to prepare was a government over these thirteen States, but that in our proceedings we adopted principles, which would be right and proper only on the supposition that there were no State governments at all, but that all the inhabitants of this extensive continent were in a state of nature and without government. That, accordingly, the *new system* proposes the legislature to consist of two branches; the one to be drawn from the *people at large*, the other to be chosen in a more select manner as a check upon the first. In its very *introduction declared to be a compact between the people of the United States as individuals*, and it is to be ratified by the people at large in *their capacity as individuals*. * * * * *

"Whereas, it was urged that the principle on which a federal government over States ought to be *constructed* and *ratified*, are the reverse; that instead of the legislature consisting of *two branches*, one branch was sufficient, whether examined by the dictates of reason or

the experience of ages. That the representation, instead of being drawn from the people at large, as *individuals*, ought to be drawn from the *States as States* in their *sovereign* capacity.

“ It was further said, that in a federal government over States equally *free, sovereign and independent*, every State ought to have an equal share in making the federal *laws or regulations*; in *deciding* upon them and in *carrying them into execution*, *neither of which* was the case in *this system*. * * That in the whole system there was but one federal feature—the appointment of the Senators by the States in their *sovereign* capacity, that is, by their Legislatures, and the equality of suffrage in that branch; but it was said this feature was only federal in appearance.”

After an exhaustive argument upon each preceding section, the able author of the report presents his objections to the clause defining treason against the United States, in the following terms :

“ By the third section of this article it is declared that treason against the United States shall consist in levying war against them, or in adhering to their enemies, giving aid and comfort.

“ By the principles of the American Revolution, *arbitrary power may and ought* to be resisted, even by arms if necessary. The time may come when it shall be the duty of a *State*, in order to preserve to the sword; in which case the proposed form of government de-itself from the oppression of the General Government, to have recourse clares, that the State and every one of its citizens who *act under its authority*, are guilty of a *direct act of treason*; reducing by this provision the different States to this alternative: that they must tamely and passively yield to despotism, or their citizens must oppose it at the hazard of the halter, if unsuccessful; and reducing the citizens of the State, which shall take arms, to a situation in which they must be exposed to punishment. Let them act as they will, since, if they obey the authority of their State government, they will be guilty of treason against the United States; if they join the General Government they will be guilty of treason against their own State. To save the citizens of the respective States from this disagreeable dilemma, and to secure them from being punishable as traitors to the United States, when acting expressly in obedience to the authorities of their own State, I wished to have obtained, as an amendment to the third section the, following clause :

“ “ Provided, That no act or acts done by one or more of the States against the United States, under the authority of one or more of the said States, shall be deemed treason or punished as such; but in case of war being levied by one or more of the States against the United States, the conduct of each party towards the other, and their adherents respectively, shall be regulated by the laws of war and of nations.’

“ But (continues Mr. Martin) this provision *was not adopted* by the Convention, being too much opposed to the great object of many

of the leading members, which was by all means to *leave the States at the mercy of the General Government*, since they could not succeed in their entire abolition."

Before leaving the remarkable work from which these quotations have been made, it may not be unimportant to add a few more which relate more properly to a general view of the subject than to particular points thus far presented. On page 83 the author presents and urges the following propositions, which may somewhat surprise those of the same political school of the present day :

"That in originally forming a constitution, it was necessary that every individual should agree to it, to become bound thereby, and that when once adopted, it could not be binding by consent, unless by the consent of every individual who was a party to the original agreement ; that in forming our original Federal Government, every member of that government—that is, *each State*—expressly consented to it; that it is a part of the compact made and entered into in the most solemn manner, and there should be no dissolution or alteration of the Federal Government without the consent of *every State*. Satisfied of the truth of these propositions, and not holding ourselves at liberty to *violate the compact* which this State had solemnly entered into with the others, by altering it in a different manner from that which by the same contract is provided and stipulated, a number of members, among those the delegation of this State, opposed the ratification of this system, in any other manner than by the unanimous consent and agreement of all the States.

* * * * * * * * *

"I was also of the opinion that the States, considered as States in their political capacity, or as sovereignties, are entitled and only entitled originally, to agree upon the form of and submit themselves to a federal government. * * * Nor do these positions in the least interfere with the principle that all power originates from the people, because when once the people have exercised their power in *establishing* and forming themselves into a *State government*, it never *devolves back to them*, nor have they a right to resume or again to exercise that power, until such events take place as will amount to a dissolution of their State government."

After the adoption of the Federal Constitution by the Convention, and the recommendation of Congress in favor of its ratification by the people, in the conventions subsequently assembled, the expediency of adopting it was discussed with great ability and eloquence ; the wisdom, genius and patriotism of the nation were called into action, and every possible question involved in the great changes proposed in that instrument was most thoroughly exhausted.

Among the ablest opponents to its ratification was Patrick Henry, of Virginia, who, in a speech delivered before the Convention of that

State, on the 4th of June, 1788, after an eloquent exordium upon the condition of the country, and other matters of general character, said :

“ And here I would make this inquiry of those worthy characters who composed a part of the late Federal Convention. I am sure they were fully impressed with the necessity of forming a great *consolidated* government, instead of a Confederation. That this is a consolidated government is demonstrably clear, and the danger of such a government is to my mind very striking. I have the highest veneration for those gentlemen, but, sir, give me leave to demand what right had they to say, ‘ *We, the people,*’ instead of ‘ *We, the States?*’ States are the characteristics and the soul of a Confederation. If the States be not the agents of the compact, *it must be one great consolidated national government of the people of all the States.* * * *

America on a former occasion had put the utmost confidence in them. * * * But, sir, on this great occasion, I would demand the cause of their conduct, even from that illustrious man who saved us by his valor ; I would have a reason for his conduct.”

On the following day the same speaker said :

“ I rose yesterday to ask a question which arose in my mind. When I asked that question I thought my interrogation was obvious. The fate of this question and of America may depend on this. Have they said, ‘ *We the States?*’ Have they made a proposal of a compact between States? If they had, this would be a *Confederation*. It is otherwise, most clearly, a *consolidated government*. The question turns, sir, upon that poor little thing, the expression, ‘ *We the people,*’ instead of the States of America. I need not take much pains to show that the principles of this system are extremely pernicious, impolitic and dangerous. Is this a monarchy like England, a compact between prince and people, with checks on the former to secure the liberties of the latter? Is this Confederacy, like Holland, an association of a number of independent States, each of which retains its *individual sovereignty*? It is not a democracy wherein the people retain all their rights securely? Had these principles been adhered to we should not have been brought to this *alarming* transition *from a confederacy to a consolidated government.* * * *

Here is a revolution as radical as that which separated us from Great Britain ; it is as radical, if in this transition our rights and privileges are endangered and the sovereignty of the States relinquished. And can we not plainly see that this is actually the case? * * *

“ Are the people in their aggregate capacity the proper persons to form a Confederacy? This ought to depend upon the legislatures, people having never sent delegates to make any proposition of changing the government. Yet, I must say, at the same time, that it was made on grounds the most pure, and, perhaps, *I might have been brought to consent to it, so far as the change of government;* but there is one thing in it I never would agree to ; I mean the changing it into a *consolidated government*, which is so abhorrent to mind.”

These extracts might be extended to an almost indefinite length, but they of themselves are sufficient to prove, beyond the possibility of a doubt or cavil, that both in the Federal Convention, which adopted, and in the State Conventions, which ratified the Constitution, the whole scope and character of that instrument was most thoroughly analyzed in the exhaustive arguments of the great men of that day.

The preceding arguments, so far only of the opponents of the Constitution, are at this time presented, not with a view of determining the merits of the questions therein discussed, but for the purpose alone of showing that the doctrines of that political school which maintained an independent sovereignty of the States as a principle to be perpetuated in this government, were most thoroughly, ably and persistently urged, and in the final settlement of the controversy by the adoption of the Federal Constitution, most unequivocally and forever condemned.

As a test of the sense of the Convention, Mr. Martin, who denounced the plan of the Committee which reported in favor of a Constitution as one of “ *inequality*, because, upon the principle of popular representation, instead of representation of States, the larger States, in consequence of their greater population, would exceed the smaller ones ” in representation—recites that, “after every argument had been exhausted by the advocates of *equality* of representation, the question was called, [in convention upon the adoption of that report,] when a *majority* decided in favor of what he styled *inequality*—Massachusetts, Pennsylvania, Virginia, North Carolina, *South Carolina* and Georgia voting for it; Connecticut, New York, New Jersey and Delaware against it, and Maryland divided.” He also says: “It will be remembered that this vote was taken upon the proposition embraced in the *seventh resolution*: ‘That the right of suffrage in the first branch of the National Legislature, ought *not* to be according to the rule established in the Articles of Confederation, but according to some equitable vote of representation, namely: in proportion to the whole number of *white* and *other* free citizens, and inhabitants of every age, sex and condition,’ ” &c., and to the surprise of Mr. Martin, not only the States of Massachusetts and Pennsylvania, but also Virginia, North Carolina, South Carolina and Georgia, and even the illustrious President of the Convention, George Washington, voted for the rule of representation in the first branch upon the basis of *population*, in opposition to that of representation by States. The

writer further shows that on the next day the question came on with respect to the *inequality* of representation in the second branch ; but little debate took place—the subject had been exhausted in the former question. On votes being taken, Massachusetts, Pennsylvania, Virginia, North Carolina and South Carolina voted for inequality ; Georgia *divided*.

By this account of the action of the Constitution Convention, it will be seen that at that day the doctrine of the independent sovereignty of States was, after exhausting all argument upon the subject, most emphatically condemned by that body, and in the plan of government reported and adopted, not only the House of Representatives but the United States Senate was to be based upon *popular representation* ; and of the Southern States, Virginia, North Carolina and South Carolina voted for it, and Georgia equally divided. So strong was the sentiment of that body in favor of popular representation, and the consequent extinction of *State representation* in the national councils, that even South Carolina voted to obliterate *State representation* in the National Senate, and in favor of apportioning the number of Senators according to the population of the several States. Subsequently, it is true, as a concession to the smaller States, the present plan of two Senators from each State was adopted.

The seventh and eighth resolutions clearly and unequivocally expressed the sense of the Convention as to the principle which should underlie the whole structure of the government: “ That the right of suffrage in the first and second branches of the Congress ought *not* to be according to the rule established in the Articles of Confederation, but according to the whole number of white and other free citizens and inhabitants,” &c. Thus placing the government upon the shoulders of the people instead of upon the supposed sovereignty of the States ; renouncing in direct and positive words the rule of State representation, as recognized in the Articles of Confederation, and the Constitution embodying that principle was reported and subsequently adopted, not, as claimed by the States, in the form of a compact between them, but by the people of the United States in their capacity as citizens of the United States, uncontrolled and unaided by any action on the part of the States ; for it will be remembered that Patrick Henry, in speaking before the Convention of Virginia in opposition to its adoption, urged as his most potent argument, that the preamble, “ We the people do ordain and establish this Constitution,” instead of we the States, plainly expressed the character of the

Government to be “a consolidated Union, and destroying, in the very terms of the preamble, the last vestige of the sovereignty of the States.” Mr. Martin, in his report, dwells upon the same objection, and insists that the Convention exceeded the powers given, in undertaking to make a change so radical in its character; that the Convention had power only to form a government of States and not of individuals; that the very introduction declares it to be a compact between the *people* of the United States as *individuals*, and that it is to be ratified by the people at large, in their *capacity as individuals*.

In latter days it is contended that treason against the United States cannot be committed, because the States are sovereign; that the citizen is a citizen of his State, and that as such citizen he owes his allegiance to his State because it is sovereign; but the distinguished member from Maryland, Mr. Martin, whose reputation as a jurist has long since become national in its character, held a different opinion, and, being of the same political school as the gentlemen who now insist upon this dogma, they cannot very consistently demur to his authority:

“By the third section of this article,” says the distinguished man, “it is declared that treason against the United States shall consist in levying war against them, or in giving aid and comfort to their enemies,” and that, “by the principles of the American Revolution, arbitrary power ought to be resisted, even by arms if necessary,” and “the time may come when it shall be the duty of a State, in order to preserve itself from oppression of the General Government, to have recourse to the sword, in which case the proposed form of government declares that the State, and every one of *its* citizens *who act under its authority*, are guilty of a direct act of treason; reducing by this provision the different States to the alternative that they must tamely and passively yield to despotism, or *their* citizens must oppose it at the hazard of the halter, if unsuccessful. * * To save the citizens of the States from this disagreeable dilemma, * * I wished to have obtained, as an amendment to the third section, the following clause:

“Provided, That no act or acts, done by one or more of the States against the United States, or by any citizen of any one of the United States, under the authority of one or more of the said States, shall be deemed *treason*, and punished as such; but in case of war being levied by one or more of the States against the United States, the conduct of each party towards the other, and their adherents respectively, shall be regulated by the laws of war and of nations.’”

“But,” says Mr. Martin, “this provision was not adopted by the Convention.” So we see the Convention refused to permit the citizen to commit treason under cover of obedience to the mandates of his

State, but on the contrary determined to hold him personally responsible for his acts in his capacity as a citizen of the United States, owing his allegiance to the National Government, and not to his State, and that the great principle of the individual responsibility of the citizen to the Federal Government, which was recognized by the Convention as the corner-stone of the new political edifice they were erecting, should be carried in its minute details, even to the punishment of treason, that no ingenious sophistry of the State sovereignty school should have the slightest countenance in the Constitution of the country.

In recognition of this principle, the Constitution contains in the preamble the following clear and explicit language :

“ We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.”

The eighth section of the Constitution declares :

“ The Congress shall have power to lay and collect taxes, duties, imposts and excises ; to pay the debts and provide for the common defense and general welfare of the United States : but all duties, imposts and excises shall be uniform throughout the United States ;

“ To borrow money on the credit of the United States ;

“ To regulate commerce with foreign nations, among the several States, and with the Indian tribes ;

“ To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies, throughout the United States ;

“ To coin money and regulate the value thereof, and of foreign coins, and fix the standard of weights and measures ;

“ To provide for the punishment of counterfeiting the current coin and securities of the United States ;

“ To establish post-offices and post-roads ;

“ To promote the progress of science and useful arts, by securing to authors and inventors the exclusive right to their respective writings and discoveries ;

“ To constitute tribunals inferior to the Supreme Court ;

“ To define and punish piracies and felonies committed on the high seas, and offenses against the laws of nations ;

“ To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water ;

“ To raise and support armies ; but no appropriation of money to that use shall be for a longer time than two years ;

“ To provide and maintain a navy ;

“ To make rules for the government and regulation of the land and naval forces ;

“To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions ;

“To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be in the service of the United States: reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.

“To make all laws which shall be necessary and proper for carrying into effect the foregoing powers, vested by this Constitution in the Government of the United States, or in any department or officer thereof.

“No preference shall be given by any regulation of commerce to the ports of one State over those of another, nor shall vessels bound to one State be obliged to enter, clear or pay duties in another.

“The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property of the United States.

“The President shall be commander in chief of the army and navy of the United States, and of the militia of the several States when called into the actual service of the United States. * * * He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur ; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls,” &c.

These are, in the main, the powers granted by the people to the Government in the Federal Constitution, and constitute all the attributes of *sovereignty*, necessary to create a sovereign and independent nation.

The following are the direct prohibition of powers of a similar character to the States :

“SEC. 10. No State shall enter into any treaty, alliance or confederation ; grant any letters of marque and reprisal ; coin money ; emit bills of credit ; make any thing but gold and silver a tender in payment of debts ; pass any bill of attainder or *ex post facto* law, or law impairing the obligation of contracts ; or grant any title of nobility.

“No State shall, without the consent of Congress, lay any imposts, or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws ; and the nett produce of all duties and imposts, laid by any State on imports or exports, shall be *for the use of the treasury of the United States* ; and all such laws shall be subject to the *revision and control of the Congress*.

“No State shall, without the consent of the Congress, lay any duty on tonnage ; keep troops or ships of war in time of peace ; enter into any agreement or compact with another State, or with a

foreign power, or engage in war unless actually invaded, or in such imminent danger as will not admit of delay.

“ All debts contracted, and *engagements entered into*, before the adoption of this Constitution, shall be as valid against the United States under this Constitution as under the Confederation.

“ This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby, any thing in the constitution and laws of any State to the contrary notwithstanding.”

In the Articles of Confederation the delegates *of the States* in “ Congress assembled,” *agreed* to certain articles of confederation and perpetual union between the thirteen States, and the *States* entered into a league of friendship with each other.

In the Constitution, “ The *people* of the United States, in order to form a more perfect union, * * * do *ordain and establish* this Constitution for the United States of America.”

In the Articles of Confederation, although every attribute of sovereignty is expressly given to the United States “ in Congress assembled,” and expressly prohibited to the States, there is no deposit of coercive power to enforce the laws or to carry out the powers expressly conferred.

In the Constitution, all sovereign powers are not only expressly granted to Congress and the United States, and all essential powers of like character more fully and clearly prohibited to the States, but all the machinery of government necessary to *enforce* the laws and *compel* obedience is therein provided.

In the Articles of Confederation, no law could be passed by Congress to declare war, make treaties, coin money, ascertain the expenses of government, emit bills, borrow money, ascertain the number of vessels of war to be constructed, determine the number of troops to be raised, or to appoint a commander in chief of the army or navy; nor could any question, except that of adjournment from day to day, be determined unless with the assent of nine States of the thirteen.

In the Constitution, *all laws* are passed by a majority of each house of Congress, except when the President refuses his assent, and then by two thirds.

In the Articles of Confederation, each State maintained its own delegates while acting as members of the Committee of the States.

In the Constitution, all members of Congress and other officers of the government are paid from the treasury of the nation.

In the Articles of Confederation, in determining all questions in Congress, each State had one vote.

In the Constitution, every member of either house has one vote.

In the Articles of Confederation, all charges of war and other expenses incurred for the common defense or general welfare, were defrayed out of a common treasury, supplied by the *several States*, the taxes for which were to be levied by the *Legislatures of the several States*.

In the Constitution, all expenses of the government, whether in peace or war, are paid from the treasury of the nation, by *imposts*, *duties*, and, when necessary, by *direct taxation*.

In the Articles of Confederation, *each State* might, at its discretion, furnish its quota of money or troops, and by refusing or neglecting so to do, either overturn or destroy the government.

In the Constitution, that instrument and the laws of Congress passed pursuant thereto, are the supreme law of the land, and the judges of the States are bound thereby, anything in the constitution and laws of any State to the contrary notwithstanding.

In the Articles of Confederation, it is several times declared that the Union shall be perpetual.

In the Constitution, it is declared that all debts contracted, or *engagements entered into*, before the adoption of this Constitution, shall be as valid under the Constitution as under the Confederation.

Having presented the facts, history and principles involved in this important subject, the argument may be fairly closed by regarding as established the following conclusions:

That sovereignty, from its very nature, cannot belong to a State which recognizes a superior, or acknowledges the authority of higher power as the "supreme law of the land."

That no State can retain its sovereignty, and surrender to another the power to make peace or war, negotiate treaties, raise and support armies, collect duties and imposts, coin money, &c., and which is at the same time prohibited itself from the exercise of these powers.

That sovereignty is indivisible, and cannot be exercised by two separate authorities over the same inhabitants or territory at the same time.

That the States of the American Union, neither as colonies nor States, at any time possessed any of the attributes of sovereignty.

That the surrender of sovereignty in the Articles of Confederation, ostensibly by the States, but in fact by the people, to the "United States in Congress assembled," though a total prohibition of the exercise of such powers by the States, was found to be totally inadequate to the maintenance of a national government.

That the Federal Constitution was adopted by the people to supply the defects of the Articles of Confederation, prohibiting in direct terms all exercise of sovereignty by the States, that such political errors might no more impede the power and authority of the nation, in order to establish a government of such complete and sovereign authority as would entitle it to recognition among the family of nations, as one of the great powers of the earth.

ALLEGIANCE.

ALLEGIANCE is defined by Webster to be :

“The tie or obligation of a subject to his prince or government ; the duty of fidelity to a king, government or State.”

“Every native or citizen owes allegiance to the government under which he is born. This is called natural or implied allegiance, which arises from the connection of a person with the society in which he is born, and his duty to be a faithful subject, independent of any express promise. Express allegiance is that allegiance which proceeds from an express promise or oath of fealty. Local or temporary allegiance is due from an alien to the government under which he resides.”

In the United States, there being no kings nor princes, there are subjects. The term citizen, under a republican form of government, designates the political person who is in relation to the Government here, what the subject is in Europe or elsewhere. Allegiance with us is the same as allegiance everywhere ; the form of government makes no difference—the citizen, alike with the subject, owes his allegiance to the government under which he was born and whose protection he enjoys. Protection and allegiance go hand in hand ; one is the consideration for the other. The government provides for the citizen the full enjoyment of life, liberty and property, by means of which the Courts of the country—whether Municipal, State or Federal—where all questions pertaining thereto may be determined, and all rights enforced, and when he chooses to become a denizen of a foreign country, to protection in all the rights and privileges of an American citizen so situated, and for this purpose all the military power of his own government may be put forth for his defense. In return for this protection he is bound to support that government by the payment of taxes, duties, imposts, &c., and to maintain and defend it by military service when called upon, either to enforce the authority of the courts or the laws, suppress insur-

rection or repel invasions, to invade the territory of an enemy against whom war has been declared.

ALLEGIANCE is not due from the citizen to a town or city corporation, to the governing power of a county or State, unless that State possesses sovereignty, in full legal sense. Of whatever sovereign State or nation he is a citizen or subject, to that State or nation is his allegiance due. If the Federal Constitution, "the supreme law of the land," recognized such a political being as a *citizen of a State*, then allegiance to the State would follow; but in that instrument Congress is given power to "establish a uniform rule of naturalization," and by virtue of that authority Congress has enacted laws for the naturalization of aliens, by which, through the courts of the country, the alien, after five years residence, becomes not a citizen of any one State of the Union, but of *the United States of America*, upon satisfactory proof that he is attached to the principles, not of the Constitution of any particular State, but of the Constitution of the United States, and upon condition that he renounce all allegiance to any foreign prince, State or sovereignty whatsoever, and that he will bear *true faith and allegiance*, not to any State, but to *the United States of America*, upon which a certificate issued to him to the effect that he is entitled to all the rights, privileges and immunities of a citizen of *the United States*.

The second section of article first of the Federal Constitution declares, that "No person shall be a representative who shall not have attained the age of twenty-five years, and been seven years a *citizen of the United States*," and "who shall not when elected be an *inhabitant* of that State from which he shall be chosen."

Section third of the same article declares, that "No person shall be a Senator who shall not have attained the age of thirty-five years, and been nine years a *citizen of the United States*, and who shall not when elected be an INHABITANT of the State for which he shall be chosen."

Section one of article second provides, that "No person except a *natural born citizen of the United States* at the time of the adoption of this Constitution, shall be eligible to the office of President."

In these provisions we have seen that the alien born may under the Constitution and laws of Congress become a citizen of the United States, by swearing *allegiance thereto*. The qualifications of Senators and members of Congress are, that they shall be respectively seven

and nine years *citizens of the United States*, and *inhabitants* of the States from they shall have been chosen.

From these provisions it is conclusively shown that the political person known as a *citizen of the United States*, as distinct from an *inhabitant* of his State, is defined in that instrument, that his allegiance is due, not to the State of which he is an *inhabitant*, but to the *United States*, of which he is a *citizen*.

The Constitution requires that the rules of naturalization which Congress shall have power to establish shall be "*uniform*." Why uniform? Evidently because, were the subject left to the control of the States in any degree, the residence, conditions and terms upon which naturalization or citizenship could be obtained, would lead to interminable confusion; it is required to be uniform because the citizen thus transformed from an alien is a Federal citizen, and not the citizen of a State; and the proposition is advanced that the Constitution recognizes in the native-born citizen the citizen of his State, and not of the United States, as in direct antagonism to the naturalized citizen of the United States, and not of any State—the one owing allegiance to his State, the other to the United States, and bound by the Constitution of the country, whenever any assumed conflict might arise between the State and Federal Government, to fight against the National authority, in support of the government of his State, the other to bear arms against the insurrectionary State in defense of the Federal power, and to enforce the "Supreme law of the land." That the fathers had bequeathed to us such an inheritance of interminable discord and strife, is an absurdity, which belongs properly to that school which proclaims the sovereignty of the States, and constitutional secession.

The third section of the third article of the Constitution declares, that "Treason against the United States, shall consist in levying war against them, or adhering to their enemies, giving them aid and comfort." Treason is a violation of the obligation of allegiance by the citizen in the effort to overthrow the sovereign power of his own country to which his allegiance is due, by armed insurrection, or in giving aid and comfort to the enemy with which his country is at war.

A government not possessing sovereignty, can neither claim nor demand allegiance; where there is neither sovereignty nor allegiance there can be no treason, which is defined to be a crime against the nation's life, and punishable as such by death, confiscation and expatriation, a punishment inflicted upon no other crime.

Webster defines Treason as follows: "Treason is the highest crime, of a civil nature, of which man can be guilty. Its signification is different in different countries. *In general*, it is the offense of attempting to overthrow the government to which the *offender owes allegiance*; or of betraying the State into the hands of a foreign power. In monarchies the killing of a king, or attempting to take his life, is treason."

The third section and article of the Federal Constitution also declares that "Congress shall have power to declare the punishment for treason."

Under the power to punish treason, Congress shall declare what punishment shall be, and its definition in the Federal Constitution, as a crime against the United States, is certainly the most conclusive evidence as to the intentions of the people in adopting that instrument, that the Government thereby established should constitute a *sovereign nation*, resting upon the basis of the allegiance of the American citizen.

It has been most vehemently urged by the leaders and authors of the late rebellion, that the States, under the principles of the American Constitution, possessed the legal right at any time to secede from the Union, and claiming that right, because, as alleged,

First: That the States were sovereign and independent, and superior to the Federal Government.

Second: That the Federal Constitution did not establish a national Government, but was a mere confederation or compact. between sovereign and independent States, to be rescinded at the pleasure of any of the parties thereto.

Third: That the *citizen of the United States*, known to the Constitution, was not in fact a Federal citizen, owing his allegiance to the common government of the nation, but a citizen of the State in which he was born, resided, or in which he obtained naturalization; that his allegiance was due to the government of such State, with all the incidents of such allegiance, including military service in time of war, even against the national authority.

These propositions embody the political creed of the secessionist. The argument so far has been in direct reply to the first and second, and is of easy application to the third. Each one of these fallacies is dependent on the other; if one is false, as a necessity all are false; and without any fear as to the result of this investigation so far

upon any rational mind, the subject might with perfect safety be concluded here; but there are other considerations not yet presented, which may not be found valueless in disposing of the present question.

With those who have participated in the rebellion, and as a consequence been deprived of the privilege of the elective franchise in many of the States, it is a matter of common complaint that their rights as *American citizens* have been wrested from them illegally.

The following provision has from the first establishment of the several State governments, been engrafted substantially, and perhaps literally, upon most of the State constitutions:

“Every white male *citizen of the United States*, of twenty-one years of age, who shall have been a resident of the State one year, shall be entitled to vote at all elections.”

By this provision it will be seen that it is the first essential qualification of the voter under the constitutions of the several States, that he shall have been a *citizen of the United States*. Without this, in no State in the South is any man eligible to office or capable of voting.

According to the political faith of the secessionist there is no such person known to the law as a *citizen of the United States*, but that every man is a citizen of his State only, owing his allegiance to its sovereign authority; and claim as alone derived therefrom every civil and political right to which he is entitled; so that while he insists that he is not, neither is any one a *citizen of the nation*, how absurd is the complaint that, as an *American citizen*, he has been robbed of his privileges by the action of his State government, while in the same breath he declares that all the rights and privileges which he can or may enjoy, are derived directly from it, and not from any power or authority of the National Government.

The proceeding or process of secession, or the withdrawal of one or more States of the Union from further connection with the Government and the other States, if a legal and constitutional right, as claimed, must of necessity be practicable through agents or parties legally qualified to consummate such a proceeding. States are admitted to the Union by the action of a majority of their people in the adoption of a constitution, republican in form. Could a State withdraw again from such connection, of course it must be done legally and by the voice of a majority of the people—not of the men, women, minors and aliens—but by the voice of a majority of the

male inhabitants, of the age of twenty-one years, *citizens of the United States*, entitled to the elective franchise under the law of the State. If it is true, as claimed by the advocates of secession, that there is no such political being as a *citizen of the United States*, then according to the letter of the State constitutions, there is no where to be found a person qualified to vote at any election to be held for such purpose. If it is true, on the other hand, that the citizen is entirely and only a citizen of the United States, owing his allegiance to the Government of the nation, because of its sovereignty to which that allegiance is due as a consequence of his Federal citizenship, how can he bear "true faith and allegiance" to that Government, and prostitute his highest privilege for the purpose of its overthrow, which must instantly follow whenever it is conceded that the States can destroy the nation by releasing themselves from their obligation to maintain it; and the citizen who becomes a party to any movement having such purpose, becomes at once a traitor, in law and in fact, exposing himself to the penalties of treason. The very fact of his national citizenship wholly precludes him from such a proceeding, makes any such act a legal nullity, and stamps it at once as one of revolution and crime. So that, under every view of the argument, no one can be found who has the lawful power or authority even to cast a ballot for such a purpose; and though every inhabitant of every State should vote for secession, although it might in fact amount to revolution, in a constitutional and loyal sense it would be simply null and void, unless pursuant to previous action of the Congress of the United States, in accordance with the provisions of the Constitution.

In conclusion, may it not be well to consider that the right of "eminent domain" is one of the indispensable attributes of a sovereign nation? The million homes of the people, obtained by purchase from the National Government, to them, *their heirs and assigns, forever*, stand as an eternal guarantee that the power of that Government shall be put forth to protect them in the enjoyment of the soil thus obtained, throughout all coming time, so long as their generations shall live upon the earth. Without this element of perpetuity, in the guarantee of title in the homes of the people, as well as in the Government from which it springs, the grants of title to the soil from the Government to the people would be but a swindle, a mockery and a farce. The territories which have been ceded to the General Government by the States, as well as those obtained by treaty, ces-

sion and conquest from other nations, comprise the domain, the soil of the nation. If there is no allegiance from the citizen to the nation—if the States are sovereignties still, and may withdraw from the nation at pleasure, as a consequence of that withdrawal, the *domain* which they have ceded, as well as that within their borders, granted by the Government to its people, can and must revert to the States; and their inhabitants, whose fathers had purchased the soil, confiding in the sovereign power and perpetuity of the nation, become at once outcasts and beggars to the new power that wrests from them their inheritance.

In whatever view we present the subject, we are driven to conclude:—

That a Confederacy of States cannot establish a nation;

That Sovereignty, with all its incidents of war, peace, treaty and eminent domain, is indispensable to the existence of a nation;

That the fathers engrafted all of these principles upon the American Constitution, that through the indissoluble and perpetual Union thus established, we might become a great nation among the powers of the earth.

H 256 82



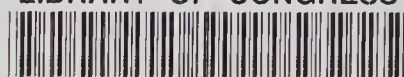


OCT 82

N. MANCHESTER,
INDIANA 46062



LIBRARY OF CONGRESS



0 019 308 807 7